CONNECTICUT TRIAL LAWYERS ASSOCIATION

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Raised Bill 5450
Public Hearing: 3-5-14

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 5, 2014

RE: SUPPORT OF HB5450, AAC ARBITRATION IN MOTOR VEHICLE ACCIDENT CASES

The CTLA strongly supports HB5450 an Act Concerning Arbitration in Motor Vehicle Accident Cases and urges its passage.

Arbitration is a tool that has been used for many years by the courts to resolve claims for personal injury sustained in a motor vehicle accident. In the typical situation where arbitration is being used, the person who caused the accident only has a minimal policy of $20,000.00. Rather than having the parties go through the time and expense of a full jury trial, the court will frequently encourage both parties to voluntarily submit the case to a binding arbitration in order to resolve the claim.

In order to make the arbitration process more appealing to the defense, the court will encourage the parties to agree to a "high". When the parties agree to a "high", that means that the arbitrator cannot award more than whatever the "high" is. In cases where the person only has a $20,000 policy, the high is frequently the $20,000.00. This is a benefit to the defendant as his/her exposure is capped within the policy limits. The arbitrator is not told what the "high" is.

At the arbitration hearing, the plaintiff's attorney will make a judgment call as to how much testimony and evidence to provide the arbitrator. Typically the parties will testify and the plaintiff's attorney will submit the medical bills and records for treatment. In cases where the "high" is $20,000.00 the physicians will not be brought in to testify due to cost constraints. Orthopedic Surgeons and Neurosurgeons, for example frequently charge in excess of $4,000 for coming to the arbitration to testify. So, the plaintiff attorney will rely just on the records and bills.

If the plaintiff is able to collect the full policy from the defendant, the plaintiff is now in a position to pursue an underinsured motorist claim against their own policy for the balance of the compensation for their injuries. However, if they had received a high damage award from the arbitrator, that number cannot be used against the underinsured motorist carrier as the underinsured motorist carrier did not participate in the arbitration. It would not be fair.

This process has been used for years. However, Marques v. Allstate, 140 Conn. App. 335 (2013) changes everything. In Marques, the court found that because the plaintiff litigates their damages in the arbitration, they are prohibited from litigating damages again in the underinsured motorist action. The plaintiff is tied to the arbitration award. So, although, the plaintiff did not bring in the doctors to testify and did just what was necessary to achieve the "high" their damages have been determined, if the underinsured motorist carrier wants. Or, the underinsured motorist carrier can require the plaintiff to litigate their damages again in the subsequent proceeding.

As a result, it makes no sense for a plaintiff with underinsured motorist coverage to arbitrate their case against the person who caused the accident as they now have to put on their entire damage case. The courts have lost an easy and effective tool for quickly moving business.

HB5450 simply restores things to where they were before the Marques decision. It is limited to only car accident cases. It says that if the parties agree to arbitrate the case, nobody can use the arbitration finding in a subsequent underinsured motorist proceeding.

WE STRONGLY URGE YOU TO SUPPORT HB5450. Thank you.